

expediting allowance, Applicant submits the above new claims which do not have the rejected terms, and cancels without prejudice the previous claims.

Rejection Pursuant to 35 USC 112

The previous 103 rejection was based on Murray et al., J.Biol.Chem. 261: 4154-4159 (1986) and Kimmel et al., Method in Enzymology 252: 393-399 (1987). Murray et al. disclose a bovine material which was apparently thought to be bovine TIMP-1 (see the discussion in Applicants April 7, 1992 amendment). Regardless, even if Murray et al. disclosed the sequence of bovine TIMP-2 (which is not here conceded), that would not render obvious the present claims, which are directed toward DNAs encoding human TIMP-2s or certain defined analogs, Fiddes v. Baird, 30 USPQ2d 1481-1485 (USPTO Bd.Pat.Ap. & Int'f. 1993) is decisive on this point:

We agree with Fiddes that his claims which are essentially directed to a DNA molecule encoding human basic FGF would not have been anticipated or rendered obvious by Baird's claims which are directed to a DNA molecule encoding mammalian and bovine basic FGF. Since the present record shows that DNA molecules encoding various mammalian FGF's have not been sequenced, it is highly speculative whether they would have the same DNA sequence as the native gene encoding human FGF, especially where the native gene encoding bovine FGF is chemically different from the native gene encoding human FGF.

Id. at page 1485.

In re Deuel, 34 USPQ2d 1210, 1216 (Fed. Cir. 1995) is also on point, in holding that a prior art reference disclosing a partial amino acid sequence does not render a DNA encoding the entire amino acid sequence obvious.

It is believed that the claims are now in condition for allowance, and such is earnestly requested. If Applicants have overlooked any fee associated with this paper or any petition, the Commissioner is authorized to charge any fee to deposit account 01-0519, and please consider this a petition therefore.

Respectfully submitted,

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